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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/675,515 | 09/30/2003 | Jacqueline Evynne Breuninger Buskop | 1207.01A | 6098 |
| <div>29637 7590 08/10/2007</div> <div>BUSKOP LAW GROUP, P.C.</div> <div>4511 Dacoma Street</div> <div>HOUSTON, TX 77092</div> | | | | |
| | | | <div>EXAMINER</div> <div>REESE, DAVID C</div> | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/675,515 | Applicant(s) BUSKOP, JACQUELINE EYVYNE BREUNINGER | |
| | Examiner David C. Reese | Art Unit 3677 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

THIS FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 5/24/2007.

- Claims 2-3 and 9-10 were canceled.
- Claims 1, 4-9 and 12-14 were amended.
- Claims 1, 4-9 and 12-14 are pending.

Claim Objections

[1] Claim(s) 7 and 9 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 5/24/2007. Accordingly, the objection(s) to the claim(s) 7 and 9 have been withdrawn.

However, as amended:

[2] Claim 1 is objected to because of the following informalities: "a hook" introduced in line 5 should be "a first hook" and "a first hook" introduced in line 6 should be "a second hook" for proper definiteness in the instant claim. The remaining claims using similar language should be changed accordingly.

Claim 7 is objected to because of the following informalities: it is indefinite to state in the instant claim of "other substantially similar fruits" and "substantially similar vegetables" as it is unclear as to what is exactly "similar".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

[3] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[4] Claims 1, 4-9, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westmoland US-5,201,578, in view of Furlonge, US-2,244,944, in further view of Johnson, US-6,619,816, and in even further view of case law.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 1, Westmoland teaches of lighted jewelry (see Fig. 8) consisting of:

- a. at least one earring clip (10 in view of col. 2, line 10, "For example, an ear clasp may be connected to the article of jewelry allowing it to be worn as an earring for pierced or non-pierced ears," as well as from col. 4 lines 15-20) with back side and front side for engaging a non-pierced ear;
- b. at least one line (29) axially secured to the at least one earring clip (10),
- d. an automatic LED (4) disposed on a lower portion of the front side [for lighting the item] (4; from col. 3, beginning with line 16, "Lighting elements 4 may be incandescent bulbs...or they may be light emitting diode, LED, devices...leads may be shortened so that the lighting elements 4 are positioned closed against the edge of the jewelry article").

The difference between the claim and Westmoland is that Westmoland does not expressly state of a hook and a first hook axially secured to the at least one line between the earring clip

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and the hook, wherein the first hook is axially aligned with the hook. Westmoland does also not expressly state of removably securing to the at least one line at least one edible food item selected from a member of the group consisting of: a fruit, a vegetable, and combinations thereof. With respect to the former issue above, Furlonge discloses of a jewelry device similar to that of Westmoland. In addition, Furlonge further teaches of a hook (9) and a first hook (9) axially secured to the at least one line (1), wherein the first hook (9) is axially aligned with the hook (9). It would have been obvious to one of ordinary skill in the art, having the disclosures of Westmoland and Furlonge before him at the time the invention was made, to modify the line (29) of Westmoland to include a hook and first hook axially aligned with each other to the line as in Furlonge. One would have been motivated to make such a combination because adding such hooks allows for the user to attach various decorative items for aesthetic purposes such as artificial flowers, as taught by Furlonge for user preference and design appeal (line 22-24, "...improve the appearance of the necklace", and on page 2, top of the right column, "...leaving it to the wearer's to arrange various flowers on their own chains as desired").

Second, with respect to the latter issue above; though Westmoland in view of Furlonge show of removably securing artificial flowers (2-6) to said line (1) by means of hooks (9), they do not show of at least one edible food item, the at least one edible food item being selected from a member of the group consisting of: a fruit, a vegetable, and combinations thereof removably secured to the at least one line. Johnson discloses an illuminated novelty confection item similar to that of Westmoland in view of Furlonge. In addition, Johnson further teaches of at least one edible food item (col. 2, lines 18-20, "...includes a light device, a light transmission element attached to the light device, and an edible confection attached...") removably secured to said

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item, with said edible food item (12 of Johnson) being selected from the group of a fruit, vegetable, and/or combinations thereof (col. 2, lines 59-64, "The confection does not necessarily have to be limited to candies, and could include virtually anything edible..."). It would have been obvious to one of ordinary skill in the art, having the disclosures of Westmoland in view of Furlonge and Johnson before him at the time the invention was made, to modify the decorative item attached to the illuminated nonpiercing earring of Westmoland in view of Furlonge to include at least one edible food item as in Johnson. One would have been motivated to make such a combination because having edible items secured onto an item thereby creating a illuminated novelty confection enhances further the amusement (illuminating the confection) and commercial viability of such products (col. 2, lines 2-3); and from col. 3, lines 3-13, "From a usage or demographic perspective, there are several possibilities including children candies, specialty concession, novelties, premium, advertising and contest marketing..." as taught by Johnson.

Re: Claim 4, Westmoland discloses wherein the automatic LED is a blinking LED light that can be actuated with a switch secured to the at least one earring clip (Col. 4, 58-66; col. 5, lines 15-58, specifically, "The microchip may be designed to provide a controlled pattern of flashing to the lighting elements..." and further, "To effect such control the microchip element is attachable to either plate...as to be included in the circuit...and lastly, "apertures 24 are located and sized to accept contact pins 22 extending from microchip element 17 to provide electrical contact between microchip 19 and lighting element leads 5." Further, it has been held that broadly providing a mechanical or automatic means (switch) to replace manual activity (inserting

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the contact pins or inserting the battery for light activation), which has accomplished the same result, involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Re: Claim 5, Westmoland in view of Furlonge teach wherein the hook (9) and the first hook (9) are between 1.5 inches and 3 inches in overall length (Note that those of ordinary skill in the art would appreciate that a modification such as a mere change in size of a component would be obvious. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). See also, MPEP § 2144.04 which states: *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.). In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Re: Claim 6, Furlonge discloses wherein the hook (27, in view of the embodiment of fig. 5) and the first hook (27) are each adapted to have at least a first prong (bottom of 26 to 28) and a second (bottom of 26 to 29) prong [for engaging at least two chewy candy items] (in view of Johnson).

Re: Claim 7, Johnson discloses wherein the at least one edible item is selected from a member of the group consisting of: blueberries, strawberries, dried fruits, blackberries, cherry tomatoes, kiwi fruits, other substantially similar fruits, substantially similar vegetables, and

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combinations thereof (col. 2, lines 59-64, "The confection does not necessarily have to be limited to candies, and could include virtually anything edible...").

As for Claim 8, Westmoland in view of Furlonge and in further view of Johnson teach of lighted jewelry (Fig. 8) consisting of:

a. at least one earring clip (10 in view of col. 2, line 10, "For example, an ear clasp may be connected to the article of jewelry allowing it to be worn as an earring for pierced or non-pierced ears," as well as from col. 4 lines 15-20) with back side and front side for engaging a non-pierced ear;

b. at least one line (29) secured to said earring clip (10); a hook (9 of Furlonge) axially secured to the at least one line (29); a first hook (9 of Furlonge) axially secured to the at least one line (29) between the at least one earring clip and the hook (9), wherein the first hook (9 of Furlonge) is axially aligned with the hook (9 of Furlonge);

c. at least one chewy candy item (in view of Johnson, see claim 1) removably secured to the at least one line (29) using a member of the group consisting of: the hook (9 of Furlong) , the first hook (9 of Furlonge), or combinations thereof; and

d. an automatic LED (4) disposed on a lower portion of the front side for lighting the at least one edible food item (4; from col. 3, beginning with line 16, "Lighting elements 4 may be incandescent bulbs...or they may be light emitting diode, LED, devices...leads may be shortened so that the lighting elements 4 are positioned closed against the edge of the jewelry article").

Re: Claim 9, Johnson discloses wherein the at least one chewy item is selected from a member of the group consisting of: soft licorice, soft raspberries, juicy fruits, and combinations

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therof ((col. 2, lines 59-64, "The confection does not necessarily have to be limited to candies, and could include virtually anything edible...").

Re: Claim 12, Westmoland discloses wherein the automatic LED is a blinking LED light that can be actuated with a switch secured to the at least one earring clip (Col. 4, 58-66; col. 5, lines 15-58, specifically, "The microchip may be designed to provide a controlled pattern of flashing to the lighting elements..." and further, "To effect such control the microchip element is attachable to either plate...as to be included in the circuit...and lastly, "apertures 24 are located and sized to accept contact pins 22 extending from microchip element 17 to provide electrical contact between microchip 19 and lighting element leads 5." Further, it has been held that broadly providing a mechanical or automatic means (switch) to replace manual activity (inserting the contact pins or inserting the battery for light activation), which has accomplished the same result, involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Re: Claim 13, Westmoland in view of Furlonge discloses wherein the hook (9) and the first hook (9) is between 1.5 inches and 3 inches in overall length (Note that those of ordinary skill in the art would appreciate that a modification such as a mere change in size of a component would be obvious. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). See also, MPEP § 2144.04 which states: *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.). In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art

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and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Re: Claim 14, Furlonge discloses wherein the hook (27, in view of the embodiment of fig. 5) and the first hook (27) are each adapted to have at least a first prong (bottom of 26 to 28) and a second (bottom of 26 to 29) prong [for engaging at least two chewy candy items] (in view of Johnson).

Response to Arguments

[5] Applicant's amendments and arguments filed 5/16/2007, with respect to the rejection(s) of claim(s) under Westmoland in view of Johnson and in further view of case law, have been fully considered. Therefore, the rejection with regard to Westmoland in view of Johnson, solely, has been withdrawn. However, upon further consideration of the amended claims, a new ground(s) of rejection is made in view of Westmoland US-5,201,578, in view of Furlonge, US-2,244,944, in further view of Johnson, US-6,619,816, and in even further view of case law. Consequently, all arguments are considered moot to said new grounds of rejection. Please note the additional notice of reference cited.

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Conclusion

[6] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[7] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

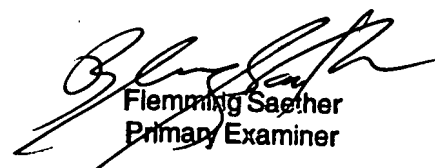
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCR



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